

## Ombudsman's Determination

Applicant Mr A

Scheme Rolls Royce UK Pensions Fund (**the Fund**)

Respondents Rolls Royce PLC (**the Administrator**)

## Outcome

1. I do not uphold Mr A's complaint and no action is required by the Administrator.

## Complaint summary

2. Mr A has complained about the delays to the transfer of his pension. He says:-

- The Administrator was not prepared for the regulatory changes to the Financial Conduct Authority (**FCA**) register for Financial Advisors and this resulted in a delay to the transfer.
- As a consequence, Mr A suffered a financial loss. He said that, had his transfer been completed on time, he would have been £40,000 better off.

## Background information. Including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. On 2 September 2019, the Administrator sent a letter to Mr A which contained a Cash Equivalent Transfer Value (**CETV**). The CETV was £803,428.46 and guaranteed for three months.
5. Also included within this letter was key information about the potential risks on transferring from a Defined Benefit Scheme (**DB Scheme**) to a Defined Contribution Scheme (**DC Scheme**). It also told Mr A that, in order to complete the transfer, he was required to receive financial advice from an Independent Financial Advisor (**IFA**) regulated by the FCA.
6. On 2 December 2019, the guaranteed period for the CETV expired.
7. On 11 December 2019, the Administrator received the required transfer documents from Mr A. Included within this was a letter from Work Place Solutions Advisory

(**WPSA**), the IFAs recommended by the Administrator. This confirmed that Mr A had received financial advice relating to the transfer.

8. On 13 December 2019, the Administrator sent a letter (**the Letter**) to Mr A. This confirmed that it had received Mr A's consent to transfer his benefits, valued at £803,428.46, into the Aegon SIPP Scheme (**Aegon**) within ten working days.
9. On 24 December 2019, Mr A emailed the Administrator and requested an update. He said a bank transfer usually took two hours and the Fund had been making significant profits at his expense by withholding the money.
10. On the same day, the Administrator emailed Mr A. It said it was waiting for legal advice following a recent change to FCA advisor authorisation. It said it expected to recommence paying out transfers in January 2019.
11. It also confirmed to Mr A that a pension scheme had three months from the receipt of completed transfer paperwork to make the transfer, so the Fund had until 10 March 2020. It also said nobody at the Fund sought to make a profit by withholding the money.
12. Later that day, Mr A emailed the Administrator and asked for clarification on the FCA changes. He was disappointed with the length of time the transfer was taking as it had cost him thousands of pounds.
13. On the same day, the Administrator responded and said that there was a requirement for anyone transferring over £30,000 to receive financial advice.
14. It confirmed that, following the FCA register changes, it was no longer able to ascertain whether WPSA was authorised to give financial advice. It said that it was awaiting legal advice to confirm whether it was safe to proceed, and that the issue should be resolved in the new year and the transfer would be paid ahead of the statutory deadline.
15. On 6 January 2020, the Administrator contacted WPSA and requested evidence to show that it was registered to provide financial advice. It said that, once that requirement was met, the payment could be processed.
16. On 13 January 2020, Mr A requested an update on the transfer from the Administrator.
17. On 14 January 2020, the Administrator responded. It said the payment was waiting for authorisation to be released. It mentioned a delay had been caused due to changes the FCA introduced in December 2019 regarding the registration of IFAs. It had written to WPSA and advised it of the new requirements and following receipt of the requested information the transfer payment would be released.
18. On 16 January 2020, WPSA provided the requested information to the Administrator.
19. On 17 January 2020, the Administrator sent a letter (**the Second Letter**) to Mr A, which mirrored the wording of the Letter.

20. On the same day, Mr A made a formal complaint to the Administrator regarding the delays to the transfer.
21. On 20 January 2020, the Administrator responded to Mr A. It said it had escalated his complaint to a specialist and would shortly be in touch with a response.
22. On 24 January 2020, £803,428.46 was transferred from the Fund to Aegon.
23. On 27 January 2020, the Administrator sent a letter to Mr A following his initial complaint. This reiterated that the Administrator had a three-month period from the receipt of completed documents to make a payment of benefits to a receiving scheme. It confirmed the transaction had been completed within the statutory timeframes.
24. The Administrator also confirmed it called WPSA in December 2019, as it required further clarification regarding the changes to the FCA register. However, these actions were still within the required timeframes.
25. On 29 January 2020, Mr A sent the Administrator an email regarding its response to his complaint.
26. On 4 February 2020, Mr A submitted an application to The Pensions Ombudsman (**TPO**).
27. On 11 February 2020, the Administrator sent a further letter to Mr A addressing his concerns.
28. On 20 March 2021, Mr A raised a formal complaint under the Fund's Internal Dispute Resolution Procedure (**IDRP**). He completed both stages, but the Trustee of the Fund (**the Trustee**) did not uphold his complaint.

### **Summary of Mr A's Position**

- When obtaining financial advice, he used WPSA, which was the company recommended by the Administrator, so there should not have been a delay in approving his transfer. The Trustee did not consider this in its IDRPs response.
- Whilst he understood that there was a change in how IFAs were registered, he believed the Trustee should have been better prepared for these changes.
- The Trustee said that the delay was because it required further information from WPSA. However, Mr A said that the real reason for the delay was due to the Trustee seeking legal advice in relation to the regulation changes. He said that this legal advice ought to have been sought prior to the implementation of the regulations.
- Had the pension been transferred immediately he would have been £40,000 better off based on FTSE 100 growth. He said it was clear from the Letter that the transfer was ready to go but then delayed.

- Unless regulations allowed for the delay of a transfer for regulatory changes then he should be compensated as the Trustee had not adequately prepared for them. He should also be compensated for the money the Fund made by unreasonably holding his pension.
- The Trustee has still not explained why the Letter was sent if the Trustee was waiting for legal advice.

### **Summary of the Administrator's position**

- It had a period of three months from the receipt of completed documents to make a payment of benefits to a receiving scheme.
- It confirmed the transaction had been completed within the regulated timeframes and it had called WPSA in December 2019 as it required further clarification regarding the changes to the FCA register.
- The information given to Mr A was correct as the Administrator required additional information from Mr A's IFA before it could authorise the release of his pension funds following the changes to the FCA register.
- Although there was prior knowledge about the FCA register changes, it was not until mid-December 2019 that any decision could be made about what additional information would be required.
- The transfer request was processed within a few working days of receiving the forms, however authorisation was suspended as the new FCA register did not show WPSA as being authorised to give advice. The Administrator carried out checks before authorising the payment in accordance with guidance from The Pensions Regulator (TPR) and the Trustee.

### **Summary of the Trustee's position**

- It was right to seek legal advice regarding whether the WPSA was authorised by the FCA and this due diligence was not due to a lack of preparation.
- The delay in processing Mr A's transfer between 13 December 2019 and 24 January 2020 was due to a change in IFA authority on the FCA website which required further information from WPSA. The transfer payment was not paid until the Administrator was satisfied WPSA held the relevant authorisation and Mr A had received all necessary and appropriate advice.
- The Administrator sought legal advice to establish what additional information WPSA could provide to satisfy the requirements. The additional information was then requested from WPSA and once provided the transfer was actioned.
- The Trustee apologised that the Second Letter was issued which was not addressed in stage one of the IDR. The reason for this was when the transfer forms were received, a case and workflow were both created and allocated to a

team member. The Letter was automatically populated, and the case was suspended when it was realised WPSA's permissions had expired.

- The Trustee had investigated Mr A's allegations of maladministration, and the delays were not significant delays in processing the transfer payment. The transfer process was adhered to in line with TPR requirements.

## Caseworker's Opinion

29. Mr A's complaint was considered by one of our Caseworkers who concluded that no further action was required by the Administrator. The Caseworker's findings are summarised below:-

- Section 99 (2) of the Pensions Schemes Act 1993 (**the Act**), states that a Trustee must pay a CETV within six months of the guarantee date. Whilst the transfer was unable to be carried out immediately, it was made within the timescales outlined in the Act. This section is included in the Appendix.
- The transfer paperwork was not received by the Administrator until 11 December 2019, which was after the guaranteed period had expired.
- Although there was a delay between receiving the transfer paperwork and completing the transfer, the Adjudicator was of the view that it was reasonable for the Administrator to seek legal advice following changes to the FCA requirements for the registration of IFAs.
- Despite the time taken to make additional checks, the transfer still took place within the timescales required under the Act.

30. Mr A did not accept the Caseworker's Opinion and the complaint was passed to me to consider. Mr A submitted further comments in response to the Opinion. In summary he said:-

- Once the Letter had been issued, the Administrator had made a commitment to carry out the transfer, which it failed to do. There was also no provision in the Act which allowed a letter to be withdrawn once a transfer commitment had been made.
- The Administrator should not use lack of preparation for regulatory change as an excuse to benefit from investment in the market at the individual's expense.

31. I have considered the additional points made by Mr A, but I agree with the Caseworker's Opinion.

## **Ombudsman's decision**

32. Mr A has complained that the Administrator caused delays to his transfer, as it was not prepared for the regulatory changes to the FCA register for IFAs. He says that he has suffered a financial loss and lost £40,000 in investment growth because the transfer did not complete on time.
33. The Act stipulates that the Trustee must pay a CETV within six months of the guarantee date. As the transfer took place within this six month timeframe, the Administrator and Trustees have fulfilled their duties under the Act.
34. In many cases, where it is a straightforward transfer, it should be completed within a shorter timeframe. However, I find the time taken for Mr A's transfer was not unreasonable. Although the Administrator did take additional time to seek legal advice and perform additional IFA authorisation checks, these were necessary in order to protect Mr A and the Trustee.
35. I understand that Mr A is disappointed with the delays and the potential loss of investment growth. However, I do not agree that the delays amount to maladministration. I therefore do not consider that there has been a financial loss as a consequence of maladministration.
36. I do not uphold Mr A's complaint.

**Anthony Arter CBE**

Deputy Pensions Ombudsman

5 March 2024

## **Appendix**

### **Pension Schemes Act 1993**

#### **Section 99 (2) - (2ZA)**

##### **Trustees' duties after exercise of option**

- (1) Where —
  - (a) a member has exercised the option conferred by section 95; and
  - (b) the trustees or managers of the scheme have done what is needed to carry out what the member requires,

the trustees or managers shall be discharged from any obligation to provide benefits to which the cash equivalent related except, in such cases as are mentioned in section 96(2), to the extent that an obligation to provide such guaranteed minimum pensions . . . continues to subsist.
- (2) Subject to the following provisions of this section, if the trustees or managers of a scheme receive an application under section 95 they must do what is needed to carry out what the member requires—
  - (a) in the case of an application that relates to benefits other than money purchase benefits, within 6 months beginning with the guarantee date shown in the relevant statement of entitlement, . . .
  - (b) in the case of an application that relates to money purchase benefits [other than collective money purchase benefits], within 6 months beginning with the date of the application, and
  - (c) in the case of an application which relates to money purchase benefits that are collective money purchase benefits, within 6 months beginning with the date of the application or such longer period beginning with that date as may be prescribed.
- (2ZA) Subsection (2) does not apply if the trustees or managers have been unable to carry out what the member requires because a condition prescribed by regulations under section 95(6ZA) has not been satisfied.

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